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EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 10th December, 1987:—

BILL No. L II OF 1987

A Bill to provide for the redressal of grievances of employees in hospitals and certain other institutions and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Hospitals and Other Institutions (Redressal of Grievances of Employees) Act, 1987.

(2) It extends to the whole of India.

(3) It shall come into force on such date as,—

(a) the Central Government may, in relation to any establishment under the control of the Central Government or any establishment wholly or substantially financed by the Central Government, by notification in the Official Gazette, appoint; and

Short
title,
extent,
commence-
ment and
applica-
tion.

(b) the State Government may, in relation to any other establishment in a State, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) Subject to the provisions contained in section 19, it applies--

(a) to every hospital, educational, scientific, research or training institution;

(b) to every institution owned or managed by an organisation wholly or substantially engaged in any charitable, social or philanthropic service;

(c) to every institution engaged in khadi and village industries, wherein ten or more persons are employed, or were employed, on any day of the preceding twelve months.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means,—

(i) in relation to any establishment under the control of the Central Government or any establishment wholly or substantially financed by the Central Government, the Central Government; and

(ii) in relation to any other establishment, the State Government;

(b) “award” means an interim or final determination of any collective grievance by an arbitrator or Board of arbitrators;

(c) “educational institution” includes—

(i) any University;

(ii) any college, whether or not affiliated to a University;

(iii) any school, whether or not recognised or aided by Government;

(iv) any scientific institution;

(v) any institution, being an institution, or a part of any other institution, which is not established with the imparting of education as one of its primary objects and in which—

(1) research in respect of any matter is carried on;

(2) the activity of imparting knowledge or training is systematically carried on;

(d) “employee” means any person (including an apprentice) employed in any establishment for hire or reward, whether the terms of employment be express or implied, and for the purposes of any application under this Act in relation to any grievance, includes any such person who has been dismissed, discharged or retrenched

in connection with, or as a consequence of, that grievance or whose dismissal, discharge or retrenchment has led to that grievance, but does not include any such person—

(i) who is subject to any law for the time being in force relating to any Armed Forces of the Union;

(ii) who is employed mainly in a managerial or administrative capacity or who, being employed in a supervisory capacity, draws wages exceeding one thousand and six hundred rupees per mensem;

(e) “employer”,—

(i) in relation to an establishment under the control of any department of the Central Government or a State Government, means the authority notified by the Head of the department in this behalf, or where no such authority is notified, the Head of the department;

(ii) in relation to an establishment under the control of a local authority, means the chief executive officer of that authority;

(iii) in relation to any other establishment, means any person responsible for the supervision and control of the establishment;

(f) “establishment” means any hospital or other institution to which this Act applies;

(g) “hospital” includes a nursing home, a dispensary or other institution, for the treatment, or for the reception and treatment, of persons requiring medical attention or rehabilitation;

61 of 1956. (h) “khadi” has the meaning assigned to it in clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956;

(i) “lock-out” means the temporary closing of an establishment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him;

15 of 1926.
21 of 1860. (j) “registered union or association” means a trade union registered under the Trade Unions Act, 1926, or an association registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State;

(k) “regulations” means the regulations made by the employer in relation to an establishment or, as the case may be, the model regulations set out in the Schedule;

(l) “strike” means a cessation of work by a body of persons employed in an establishment acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

3 of 1956. (m) “University” means a University as defined in clause (f) of section 2 of the University Grants Commission Act, 1956 and includes—

(i) any institution of higher education, other than a University, declared by the Central Government under section 3 of the University Grants Commission Act, 1956, as an institution deemed to be a University for the purposes of that Act; and

3 of 1956.

(ii) any other institution which, under a Central Act, a Provincial Act or a State Act, is empowered to hold examinations and grant degrees, diplomas or certificates;

(n) "village industries" has the meaning assigned to it in clause (n) of section 2 of the Khadi and Village Industries Commission Act, 1956.

61 of 1956.

(o) "wages" means all remunerations capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession,

but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

CHAPTER II

AUTHORITIES UNDER THE ACT

Grievance
Redressal
Authority
and
Appellate
Authority.

3. (1) Every employer in relation to any establishment shall, within a period of sixty days from the date of commencement of this Act or from the date on which such establishment comes into being, whichever is later, appoint—

(a) a person eligible under the regulations to be appointed as the grievance redressal authority, as the Grievance Redressal Authority in relation to such establishment; and

(b) a person eligible under the regulations to be appointed as an appellate authority, as the Appellate Authority in relation to such establishment,

who shall discharge their assigned functions in respect of grievances in relation to any of the conditions of service of any employee (hereinafter referred to as individual grievance).

(2) Every appointment made under sub-section (1) shall, within a period of fifteen days from such appointment, be communicated to such officer as the appropriate Government may, by notification in the Official Gazette, specify in this behalf (hereinafter referred to as the specified

officer) and copies thereof shall also be forwarded to the registered union or association, if any, functioning in the establishment concerned.

(3) Where an employer fails to appoint a Grievance Redressal Authority or an Appellate Authority under sub-section (1), the appropriate Government or the specified officer may, by notice in writing, require the employer to make such appointment within seven days of the receipt of such notice.

(4) Where an employer fails to comply with a notice under sub-section (3), the appropriate Government or the specified officer may itself make such an appointment.

(5) Subject to the regulations, the Grievance Redressal Authority or the Appellate Authority appointed under this section shall have power to regulate its own procedure.

CHAPTER III

REDRESSAL OF GRIEVANCES

4. (1) Every employer in relation to an establishment shall make regulations to provide for the following matters, namely:—

Employer
to make
regulations
in regard
to certain
matters.

(a) eligibility of persons to be appointed as the Grievance Redressal Authority or the Appellate Authority;

(b) the procedure to be followed by the Grievance Redressal Authority or the Appellate Authority, as the case may be.

(2) Every regulation made under sub-section (1) (including any modification thereto) shall be—

(a) forwarded by registered post to the specified officer and to the registered union or association, if any, functioning in the establishment concerned; and

(b) notified on the notice board of the establishment.

(3) Every regulation referred to in sub-section (1) shall be forwarded to the persons referred to in clause (a) of sub-section (2) by the employer in relation to an establishment within a period of sixty days from the date of commencement of this Act or from the date on which such establishment comes into being, whichever is later, and every modification to such regulation shall be forwarded by the employer to the said persons within a period of sixty days from the date on which such modification is made.

(4) The employer shall supply to every employee, on a request made therefor, a copy of the regulations (including any modification thereto) forwarded to the specified officer and the registered union or association, if any, under sub-section (2).

(5) Until regulations are made by an employer in relation to an establishment with respect to the matters mentioned in sub-section (1), the model regulations with respect to those matters as specified in the Schedule shall be deemed to be the regulations with respect to those matters in relation to such establishment.

Redressal
of individual grie-
vances.

5. (1) Any employee who has an individual grievance may apply to the Grievance Redressal Authority, established for the establishment in which he is employed, for the redressal of the grievance.

(2) The Grievance Redressal Authority shall, after giving such employee and his employer (hereafter in this section referred to as parties to the grievance) a reasonable opportunity of being heard and after making such inquiry as it deems fit, pass such order in respect of such grievance as it deems to be just and appropriate, and such order shall, subject to the other provisions of this section, be final.

(3) The Grievance Redressal Authority shall endeavour to pass a final order on an application made to it under sub-section (1) within a period of sixty days from the date on which such application is made.

(4) Where—

(a) the Grievance Redressal Authority fails to pass the final order in respect of any individual grievance within the period specified therefor under sub-section (3), any party to the grievance; or

(b) any party to the grievance is aggrieved by the final order of the Grievance Redressal Authority, such aggrieved party,

may, within a period of forty-five days from the date on which the Grievance Redressal Authority should have passed its final order on the grievance under this section or, as the case may be, from the date of such final order, prefer an appeal to the Appellate Authority referred to in clause (b) of sub-section (1) of section 3:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(5) The Appellate Authority shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such inquiry as it deems fit, pass such order in respect of the grievance as it deems to be just and appropriate and such order shall, subject to the provisions of sub-section (7), be final.

(6) The Appellate Authority shall endeavour to pass a final order on an appeal made to it under sub-section (4) within a period of ninety days from the date on which such appeal is made.

(7) Where—

(a) the Appellate Authority fails to pass the final order in respect of any individual grievance within the period specified therefor under sub-section (6), any party to the grievance; or

(b) any party to the grievance is aggrieved by the final order of the Appellate Authority, such aggrieved party,

may, within a period of forty-five days from the date on which the Appellate Authority should have passed its final order on the grievance under this section, or, as the case may be, from the date of such final order, prefer an appeal to the Tribunal constituted by the appropriate Government by notification in the Official Gazette consisting of only one person who has, at least five years, held a civil judicial post in the State:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days:

Provided further that a Tribunal appointed by a State Government and specified in this behalf by the Central Government, shall be competent to entertain an appeal in relation to any grievance in an establishment for which the Central Government is the appropriate Government.

(8) The Tribunal shall endeavour to pass a final order on an appeal made to it under sub-section (7) within a period of ninety days from the date on which such appeal is preferred:

Provided that where the parties to the grievance jointly apply for the extension of such period for any reason, and the Tribunal considers it necessary or expedient to extend such period, it may, for reasons to be recorded in writing, extend such period by such further period as it may deem fit.

(9) The Tribunal shall, after giving the parties a reasonable opportunity of being heard and after making such inquiry as it deems fit, pass such order in respect of the grievance as it deems to be just and appropriate and such order shall be final.

6. Every order of the Grievance Redressal Authority or the Appellate Authority or the Tribunal under this Act shall come into operation on and from such date (including a date preceding the date of the order) as may be specified therein, but where no such date is specified, it shall come into operation on the date of the order.

Enforceability of orders.

7. The order of the Grievance Redressal Authority, or of the Appellate Authority, or of the Tribunal in an individual grievance shall be binding on—

Persons on whom orders are binding.

(a) the parties to the individual grievance; and

(b) where a party referred to in clause (a) is an employer, his heirs, successors or assigns in respect of the establishment to which the grievance relates.

8. (1) During the period of pendency of any proceeding in connection with any grievance before any authority under this Act—

Prohibition of strikes or lock-outs.

(a) no employee shall go on strike or indulge in any other form of cessation or retardation of work, such as, work to rule, go slow, gherao or the like in breach of contract;

(b) no employer shall lock-out his employees.

Explanation.—In this section “period of pendency” includes a period not exceeding fifteen days during which the matter is pending with the appropriate Government for reference of the grievance to a Board of arbitrators referred to in section 10.

(2) No person shall instigate or incite any other person to take part in or otherwise act in furtherance of a matter referred to in sub-section (1).

CHAPTER IV

COLLECTIVE GRIEVANCES

Management
Council.

9. (1) Every employer in relation to any establishment shall, within such time as may be specified by the appropriate Government in this behalf, appoint a Management Council consisting of members not less than two and not more than ten representing both the employer and the employees which shall discharge its assigned functions in respect of any grievance specified in sub-section (9) (hereinafter referred to as the collective grievance).

(2) Subject to the rules made by the appropriate Government, the term of office of the members of the Management Council appointed under sub-section (1) shall be three years.

(3) The number of members representing the employees in the Management Council shall be equal to the number of members representing the employer.

(4) The members of the Management Council representing the employer shall be nominated by the employer and the members of the Management Council representing the employees shall be chosen by registered unions or associations on the basis of their proportionate membership of employees in the establishment and only such unions or associations which have not less than ten per cent. of the membership of employees of such establishment shall be eligible for nominating a member:

Provided that where there is no registered union or association representing the employees in such establishment or such union or association has not the required membership of employees of such establishment, the representation of the employees in the Management Council shall be made in such manner as may be prescribed.

(5) The meetings of the Management Council shall be presided over alternatively by a member representing the employer and a member representing the employees.

(6) Subject to the rules made by the appropriate Government, the Management Council shall have power to regulate its own procedure.

(7) The Management Council shall promote harmonious relations between the employer and his employees and shall advise the employer to frame bye-laws regarding conditions of service of, and conduct and discipline in relation to, the employees of the establishment.

(8) Where any Management Council has been established for any establishment, any collective grievance shall, at the instance of the employees representing not less than ten per cent. of the employees in the establishment, or registered unions or associations representing the employees in the Management Council, be referred to the Management Council for settlement.

(9) The grievances which can be referred to the Management Council under sub-section (8) shall be the grievances relating to—

- (a) wages including period and mode of payment;
- (b) compensatory and other allowances;

- (c) hours of work and rest intervals;
- (d) leave with wages and holidays;
- (e) retirement benefits.

(10) Where any collective grievance is referred to the Management Council, it shall make all efforts to promote a fair and amicable settlement of such grievance.

(11) The settlement, referred to in sub-section (10) and arrived at between the parties to a collective grievance, shall be recorded in the form of a memorandum and signed by the parties to the grievance or their authorised representatives.

(12) The members of the Management Council shall be paid by the employer such travelling and other compensatory allowances as the appropriate Government may specify by rules.

10. (1) Where the Management Council fails to settle any collective grievance referred to it under section 9 within a period of ninety days from the date on which such reference is made, it shall, at the instance of either party, refer the grievance for arbitration to an arbitrator, agreed to by the parties to the grievance or, where the parties to such grievance fail to agree on the arbitrator, such grievance shall be referred by the appropriate Government to a Board of arbitrators constituted by it on a request made in that behalf by either party:

Arbitra-
tion.

Provided that a reference for arbitration to an arbitrator or a Board of arbitrators shall specify the period within which such arbitrator or the Board of arbitrators shall submit its award on such grievance:

Provided further that where the parties to the grievance jointly apply for the extension of such period for any reason, and the arbitrator or the Board of arbitrators considers it necessary or expedient to extend such period, he or it may, for reasons to be recorded in writing, extend such period by such further period as he or it may deem fit.

(2) The Board of arbitrators referred to in sub-section (1) shall consist of an independent person having judicial experience who shall be the Chairman thereof and two other members, one on behalf of the employer in relation to the establishment to which the collective grievance relates and the other on behalf of the employees of such establishment.

(3) Where the members of a Board of arbitrators are divided in their opinion, the decision of the majority shall be deemed to be the award for the purpose of this Act.

(4) The appropriate Government may make rules for the functioning of the arbitrators and the Board of arbitrators and the qualifications required by a person to be appointed as an arbitrator and a member of the Board of arbitrators.

(5) For the purpose of choosing arbitrators by the employer and employees, the appropriate Government shall maintain a panel of persons eligible for appointment as arbitrators.

(6) The arbitrator or the Board of arbitrators shall after giving the parties to the application and the financial institutions which are likely to have substantial financial or other interests in the settlement of the collective grievance, a reasonable opportunity of being heard and after making such inquiries as it deems fit, pass such award in respect of the said grievance as it deems to be just and appropriate, and such award shall be final.

(7) Notwithstanding anything contained in this Act, the appropriate Government may, if it is of opinion that a collective grievance, in relation to a class or category of establishments, involves issues which may affect the national economy or social justice or the interest of the general public, refer that grievance to a Board of arbitrators for its award and the award given by such Board of arbitrators shall apply to such class or category of establishments.

(8) The remuneration payable to an arbitrator or a member of a Board of arbitrators for arbitrating any collective grievance referred to them for arbitration, shall be such as may be specified by rules made by the appropriate Government and shall be paid by such of the parties to the said grievance and in such proportion as the arbitrator or a Board of arbitrators may determine.

(9) Every arbitrator or Board of arbitrators shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for examination of witnesses; and

(d) such other matters as may be specified by rules made by the appropriate Government.

(10) Nothing in the Arbitration Act, 1940 shall apply to any arbitration under this Act.

10 of 1940.

Award.

11. (1) The arbitrator or the Board of arbitrators shall give notice in writing to the parties to the collective grievance regarding the date on which the award shall be announced.

(2) An award shall, as far as practicable, be announced in the presence of parties to the grievance.

(3) The award of the arbitrator or the Board of arbitrators shall be final and binding on both the employer and employees and shall be enforceable on the expiry of thirty days from the date of the award.

(4) Where the appropriate Government is of the opinion that it will not be expedient, on public grounds affecting national economy or social justice, to give effect to the whole or any part of the award, that Government may, by notification in the Official Gazette, declare that such award shall not become enforceable on the expiry of the period referred to in sub-section (3).

(5) Where a declaration has been made under sub-section (4), the appropriate Government may, within ninety days from the date of the award, by notification in the Official Gazette, make an order rejecting or modifying the award and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by the State Government, or before the Parliament, if the order has been made by the Central Government.

(6) Where an award, as rejected or modified by the appropriate Government, is laid before the Legislature of the State or, as the case may be, before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid and where no order as contemplated in sub-section (5) is made in pursuance of a declaration under sub-section (4), the award shall become enforceable on the expiry of ninety days referred to in sub-section (5).

(7) Subject to the provisions contained in sub-sections (3) and (6), the award shall come into force with effect from such date as may be specified therein but where no date is specified it shall come into force on the date on which the award becomes enforceable under sub-section (3) or sub-section (6), as the case may be.

12. During the pendency of any proceeding in connection with any grievance before any authority under this Act, no employer shall alter to the prejudice of the employee the conditions of service applicable to him immediately before the commencement of such proceeding or shall discharge or punish by way of dismissal or otherwise any such employee except with the prior permission in writing of the said authority.

Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

20 of 1946.

13. Notwithstanding anything contained in the Industrial Employment (Standing Orders) Act, 1946, every employer shall, in consultation with the Management Council referred to in section 9, make bye-laws for codifying the conditions of service, conduct, discipline and other matters in respect of his employees within a period of six months from the date of appointment of such Management Council and every employer shall lay before the Management Council the bye-laws, by whatever name called, as in force on the date of commencement of this Act concerning the conditions of service, conduct, discipline and other matters in respect of his employees.

Employer to codify terms and conditions of service of his employees.

CHAPTER V

PENALTIES

14. (1) Any employer who—

(a) refuses or fails to appoint a Grievance Redressal Authority or an Appellate Authority as required under this Act or fails to communicate any such appointment; or

Penalties.

(b) fails to constitute a Management Council within the time specified under sub-section (1) of section 9; or

(c) refuses or fails to comply with any order of a Grievance Redressal Authority which has become final or any order of an Appellate Authority; or

(d) fails to codify the terms and conditions of service of his employees within the period specified under section 13; or

(e) fails to carry out such directions as may be given to him by the appropriate Government or the specified officer under section 17; or

(f) acts in contravention of the rules or regulations made under this Act,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both and if any such contravention is continued after conviction, with a further fine which may extend to two thousand rupees for each day on which the contravention is so continued.

(2) An employee who resorts to strike or indulges in other form of cessation or retardation of work in any establishment, such as, work to rule, go slow, *gherao* or the like in violation of the provisions of this Act shall be punishable with imprisonment of not less than one month but which may extend to three months and with fine which may extend to one thousand rupees.

(3) Any person who instigates or incites others to take part in or otherwise acts in furtherance of an offence referred to in sub-section (2) shall be punishable with imprisonment of not less than two months but which may extend to six months and with fine which may extend to ten thousand rupees.

(4) Any employer who resorts to lock-out in violation of the provisions of this Act shall be punishable with imprisonment of not less than one month but which may extend to six months and with fine which may extend to fifty thousand rupees.

(5) Any employer who changes the conditions of service of his employees in contravention of the provisions of this Act shall be punishable with imprisonment of not less than one month but which may extend to six months and with fine which may extend to fifty thousand rupees.

(6) Any person who commits breach of any term of settlement arrived at in the Management Council or of any order or award which is binding on him shall be punishable with imprisonment for a term of not less than one month but which may extend to six months and with fine which may extend to twenty thousand rupees.

Offences
by com-
panies.

15. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER VI

MISCELLANEOUS

16. Where any money is due to any employee under any order of any authority under this Act, the employee himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the employee, his heirs or assignee may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Recovery
of money
due from
employer.

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that the appropriate Government may, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding two years.

17. Every establishment to which this Act applies shall carry out such directions as may be issued to it from time to time by the appropriate Government or the specified officer for the efficient administration of the provisions of this Act in such establishment.

Power to
give direc-
tions.

18. (1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government.

Cogniz-
ance of
offences.

(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Act not to apply to certain establishments.

19. (1) This Act shall not apply to—

- (a) an establishment owned or controlled by Government;
- (b) a society registered under the Societies Registration Act, 1860, or under any other corresponding law for the time being in force in the State which the appropriate Government may, by notification in the Official Gazette, specify having regard to the matters, such as—

21 of 1860.

(i) whether the society is financed entirely by the Government;

(ii) whether the society has provided adequate provision for joint consultative machinery or similar machinery consisting of representatives of employees and employer for the purpose of settling collective grievance;

(iii) whether the society is within the purview of the Administrative Tribunals Act, 1985 or some other Tribunal by whatever name called in the States; and

13 of 1985.

(iv) whether employees of the society are governed by rules and regulations that are analogous or similar to rules and regulations governing the Government servants.

(2) Where an establishment referred to in sub-section (4) of section 1 is an educational institution, the provisions of this Act shall cease to apply to such institution as and when the appropriate Government makes a law for the redressal of grievances of employees of such institution.

Power to exempt.

20. Where in any establishment, any joint consultative machinery consisting of representatives of employees and employers or any other body consisting of one or more persons (by whatever name called) has been set up for the purpose of redressing any individual or collective grievance therein and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body is on the whole not less favourable to employees in such establishment than the machinery provided under this Act, the appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt such establishment from the operation of all or any of the provisions of this Act for such period as may be specified in the notification.

Protection of action taken under this Act.

21. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder.

Effect of contract or laws inconsistent with the Act.

22. The provisions of this Act shall, save as otherwise provided in this Act, have effect notwithstanding anything inconsistent therewith contained in any contract of service or any other law.

Delegation of powers.

23. The appropriate Government may, by notification in the Official Gazette, direct that any power, except the power under this section and section 24, exercisable by it under this Act or the rules made thereunder

shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the direction; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in that direction.

24. (1) The appropriate Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of members of the Management Council under sub-section (2) of section 9;

(b) the procedure of the Management Council under sub-section (6) of section 9;

(c) the travelling and other compensatory allowances payable to members of the Management Council under sub-section (12) of section 9;

(d) the functions of arbitrators and the Board of arbitrators and the qualifications required by a person to be appointed as an arbitrator or a member of the Board of arbitrators under sub-section (4) of section 10;

(e) the remuneration payable to any arbitrator or member of the Board of arbitrators under sub-section (8) of section 10;

(f) the matters to be specified under clause (d) of sub-section (9) of section 10;

(g) any other matter which has to be or may be specified by rules.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made before the State Legislature.

(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 2(k) and section 4(5)]

MODEL REGULATIONS

CHAPTER I

QUALIFICATIONS FOR APPOINTMENT OF GRIEVANCE REDRESSAL AUTHORITY
AND APPELLATE AUTHORITY

Persons
eligible
for ap-
pointment
as Griev-
ance Red-
ressal
Authority.

1. The Grievance Redressal Authority shall, in relation to an establishment, be a person who is employed in a managerial capacity in such establishment.

Persons
eligible
for ap-
pointment
as Appel-
late Autho-
rity.

2. The Appellate Authority shall, in relation to an establishment, be a person who is employed in such establishment and holding a post higher than the post held by the person appointed as Grievance Redressal Authority under regulation 1:

Provided that where there is no such person in any establishment, the Appellate Authority shall, in relation to such establishment, be a person who, on an application made by the employer of such establishment in this behalf, is appointed by the appropriate Government.

CHAPTER II

PROCEDURE TO BE FOLLOWED BY THE GRIEVANCE REDRESSAL AUTHORITY AND
THE APPELLATE AUTHORITY

Procedure
to be
followed
by the
Grievance
Redressal
Authority.

3. Where an application has been received by a Grievance Redressal Authority under sub-section (1) of section 5, it shall give a specific number to the application and shall communicate the receipt of the application to the employee, together with the number of the application and the date of its receipt:

Provided that no such application shall be entertained by the Grievance Redressal Authority unless it is made within a period of sixty days from the date on which the cause of grievance has arisen:

Provided further that the Grievance Redressal Authority may, if it is satisfied that the applicant was prevented by sufficient cause from making an application within the period hereinbefore specified, allow it to be made within a further period not exceeding thirty days.

Written
statement
by the
employer.

4. (1) The Grievance Redressal Authority shall, as soon as may be, after the receipt of an application referred to in regulation 3, forward a copy thereof to the employer and request him to furnish his statement in writing within seven days and also request him to send a copy of the statement furnished by him to the applicant or applicants, as the case may be.

(2) The statement to be furnished by the employer under sub-regulation (1) may include detailed replies to each item of grievance contained in the application, the documents on which the employer

relies, the person who will represent him before the Grievance Redressal Authority (who will not be a legal practitioner) and the names of witnesses he would like to examine at the time of the hearing.

5. The Grievance Redressal Authority may, after the receipt of the written statement by the employer under regulation 4, cause a written summons to be served on the applicant or applicants and the employer requiring them to appear before him on a date and time to be specified in the summons.

Issue of
summons.

6. The Grievance Redressal Authority may, during the course of an inquiry, examine witnesses, if any, and scrutinise also any documentary evidence relied on by the applicant and the employer and the applicant would be entitled to seek the assistance of a past or present employee in the establishment to present his case.

Inquiry
by the
Grievance
Redressal
Authority.

7. (1) At the hearing of any application, parties shall produce their own witnesses, but for the proper disposal thereof, a Grievance Redressal Authority shall have power to issue summons, to require the attendance of any person either to give evidence or to produce a document or to do such other acts as it may consider necessary.

Power to
summon
witnesses,
etc.

(2) Any person receiving summons or other process shall be bound to comply with the same.

8. Evidence given orally before the Grievance Redressal Authority shall be on oath and a brief memorandum of the substance of what each person deposes shall be written and kept as part of the record.

Evidence
to be on
oath and
a brief
memoran-
dum to
be kept.

9. The final order of the Grievance Redressal Authority shall be in writing and shall be communicated to the parties to the application within one week of the date of the order.

Final order
of the
Grievance
Redressal
Authority.

10. (1) Every appeal preferred under sub-section (4) of section 5 shall be presented to the Appellate Authority to whom the appeal lies and a copy of the same shall be forwarded by the appellant to the Grievance Redressal Authority against whose order the appeal is preferred.

Form of
appeal.

(2) The appeal shall contain all material statements and arguments on which the appellant relies and shall be complete in itself.

(3) The Grievance Redressal Authority which made the order appealed against shall, on receipt of a copy of the appeal under sub-regulation (1), forward the same with its comments thereon together with the relevant records to the Appellate Authority within a period of fifteen days and without waiting for any direction from the Appellate Authority.

11. The Appellate Authority shall give notice to the parties to the appeal regarding the date and time of the hearing and shall request them to be present before it on such date and time of the hearing.

Notice
for
hearing.

Procedure
to be
followed
by the
Appellate
Authority.

12. (1) On the date and time fixed for the hearing of the appeal, the Appellate Authority shall, after following the procedure specified in sub-section (5) of section 5, consider whether the procedure laid down in these regulations has been complied with by the Grievance Redressal Authority and whether the findings of the Grievance Redressal Authority are warranted by the evidence on record and pass final orders confirming, modifying or setting aside the final order of the Grievance Redressal Authority or may remit the application to the Grievance Redressal Authority with such direction as it may deem fit in the circumstances of the case.

(2) Notwithstanding anything contained in sub-regulation (1), if the Appellate Authority considers it necessary to do so in the interests of justice, it shall itself hold an inquiry which shall, as far as may be, held in accordance with the provisions of regulation 8

STATEMENT OF OBJECTS AND REASONS

The Supreme Court, in the *Bangalore Water and Sewerage Board Vs. A. Rajappa and Others* (AIR 1978 SC 548), held, *inter alia*, that educational institutions and research institutes, which satisfied the tests laid down by it, would come within the definition of the term 'industry' as contained in the Industrial Disputes Act, 1947. The Supreme Court also over-ruled its earlier judgment in the *Management of Safdarjung Hospital Vs. Kuldip Singh Sethi* (AIR 1970 SC 1407) and held that all hospitals would come within the purview of that Act.

2. Since hospitals, educational, scientific, research and training institutions have special and distinct characteristics of their own and an atmosphere that eschews strife and conflict has to be maintained therein, it was decided to exclude these institutions from the definition of the term 'industry' as contained in the Industrial Disputes Act, 1947. The term 'industry' was accordingly re-defined by the Industrial Disputes (Amendment) Act, 1982 so as to exclude, among others, hospitals, dispensaries, educational, scientific, research or training institutions. However, keeping in view the special characteristics of the activities of these institutions and the fact that their workmen also need protection, it was decided to have a separate law for the settlement of individual disputes as well as collective disputes in respect of workmen of these institutions and, for this purpose, the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982 was introduced in the Rajya Sabha on the 6th May, 1982.

3. This Bill elicited considerable opposition. Subsequently, during the course of the debate in the Rajya Sabha on 1st August, 1984, the Labour Minister had informed the House that as the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982 had become controversial, he would discuss the matter further with the trade unions and would not do anything without taking them into confidence. In pursuance of this assurance, meetings were held with the representatives of the Central Workers' Organisations in July/August, 1985. In the light of the discussions held with them and also with the voluntary organisations held earlier in January, 1983, a Grievance Redressal Mechanism has been evolved in respect of employees of institutions and establishments to be excluded from the purview of the Industrial Disputes Act, 1947.

4. The Bill, among other things, provides for the following matters, namely:—

(i) It shall apply to every hospital and other institution other than those owned or managed by, the Government, every institution owned or managed by an organisation wholly or substantially engaged in any charitable, social or philanthropic service and every institution engaged in khadi and village industries, where ten or more persons are employed.

(ii) The Grievance Redressal Mechanism under the Bill provides for a Grievance Redressal Authority and an Appellate Authority for the settlement of individual grievances and a Management Council for the settlement of collective grievances. When the individual employee has exhausted his remedies with the Grievance Redressal Authority and Appellate Authority, he will have the right to approach directly an independent Tribunal. Similarly, where the Management Council is unable to resolve a grievance within a specified period, either party will be free to refer the matter for arbitration to an agreed arbitrator failing which the matter will be referred to a Board of arbitrators which will give its award within a specified period.

(iii) Where major issues involving the national economy or social justice or the interest of the general public arise from the grievances presented for redressal, Government would have the power on its own to refer the matter to a Board of arbitrators.

(iv) In order to ensure immediate enforcement of the proposed legislation, model regulations have been included in the legislation. These indicate, *inter alia*, the qualifications for appointment of Grievance Redressal Authority and Appellate Authority and procedure to be followed by them for the settlement of grievances.

(v) The appropriate Government will be empowered to exempt any establishment from the operation of all or any of the provisions of this Mechanism subject to a condition among other things that an alternative joint consultative machinery for redressal of grievances exists therein.

(vi) Appropriate penal provisions are also provided in the Bill for ensuring strict compliance of the law.

5. The Bill seeks to achieve the above objectives.

PURNO A. SANGMA

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19(1)(b) of the Bill empowers the appropriate Government not to apply the legislation to societies registered under the Societies Registration Act, 1860, or under any other corresponding law in force in the State having regard to the matters specified in that clause.

2. Clause 20 of the Bill empowers the appropriate Government to exempt any establishment from the operation of all or any of the provisions of the Bill where in such establishment any joint consultative machinery consisting of representatives of employees and employer or any other body consisting of one or more persons has been set up for the purpose of redressing any individual or collective grievance therein and the appropriate Government is satisfied that the functioning of such joint consultative machinery or other body is on the whole not less favourable to employees in such establishment than the machinery provided under the Bill.

3. Clause 24 of the Bill seeks to empower the appropriate Government to make rules for the purpose of giving effect to the provisions of the proposed legislation. The matters with respect to which rules may be made, *inter alia*, relate to the term of office of members of the Management Council, the procedure of the Management Council, travelling and other compensatory allowances payable to the members of the Management Council, the functions of arbitrator and the Board of arbitrators and the qualifications required by a person to be appointed as an arbitrator or a member of the Board of arbitrators and the remuneration payable to an arbitrator or a member of the Board of arbitrators.

4. Every rule made by the State Government under clause 24 is required to be laid before the State Legislature and every rule made by the Central Government under that clause is required to be laid before Parliament.

5. The delegation of legislative power under the above-mentioned provisions relates to the matters of procedure or administrative detail or to matters in respect of which it is not practicable to make detailed provisions. Hence, the delegation of legislative power is of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.

